for flexibility : The Conference Report (p. 131) calls for "explicit" support only "[to] the extent possible." Moreover, §201(b) of the Communications Act, unchanged by the 1996 amendments. expressly authorizes the Commission to "classify" communications into a list of categories that includes "commercial" (i.e., business, as opposed to residential) and "such other classes as the Commission may decide to be just and reasonable." That section then expressly states that "different charges may be made for the different classes of communications."

The combined effect of GSA's demand for higher flat charges in high cost areas and identical "cost-based" charges for business and residential customers to relieve heavy interstate long distance users of usage based charges is regressive. In contrast, Congress did not intend to adopt "reform" legislation that would result in higher rates for rural and residential customers to reduce rates for multiline business and huge government customers. Thus, there is no statutory or policy bar to the different ceilings on charges the Commission has adopted for multiline business and residential and single line business customers, consistent with its obligation under §254(b)(3) to preserve and improve service for "[c]onsumers in all regions of the nation, including ... those in rural, insular and high cost areas ..."

IV. THERE IS NO JUSTIFICATION FOR DENYING ROR LECs SUFFICIENT PRICING FLEXIBILITY TO MEET COMPETITION

USTA (pp. 23-26), the joint NRTA/NTCA comments (pp. 28-29) and Alltel (pp. 4-8) explain compellingly that the language and intent of the 1996 Act, efficient and genuine competition and fundamental fairness necessitate further pricing flexibility for RoR LECs. It stands to reason that ILECs must be allowed to avoid the pitfalls inherent in opening their services to competition, but continuing to compel them to charge rates for their lowest cost geographic areas and customers that are designed to recover some of the costs of their higher cost localities and customers. Such uneconomic pricing constraints not only foreclose real competition based on marketplace signals, but also create regulatory incentives for the premium areas and customers to switch to CLEC service to avoid contributing to the ILECs' prescribed above-cost charges. The RoR ILEC's loss of customers to carriers that are not forced to charge inflated prices to their most profitable customers leaves the RoR ILEC's remaining customers to pick up costs left behind by the lost customers as well as more of their own high costs. Such regulatory arbitrage is neither economically efficient, competitively neutral nor beneficial to consumers.

GCI basically opposes regulatory flexibility for RoR carriers, although deregulation is one of the primary purposes of the 1996 Act. GCI suggests a Catch 22 standard, denying flexibility until "there is actual and real competition" (p.6) and "until [the Commission] can see the marketplace actually work" (p.7). However, GCI obviously confuses maintaining a regulatory headlock on incumbents to strengthen their competitors with "real" competition and the working of the "unseen hand" of the marketplace. Indeed, GCI urges the Commission to intervene <u>more</u> in RoR LEC markets than Congress had in mind, by imposing §251(c) network opening and voluntary RoR LEC concessions to effectuate "competition" (<u>ibid</u>.) as the cost of any flexibility for RoR ILECs to respond.[16] Unfortunately, notwithstanding GCI's militant pro-"competition" rhetoric, the Commission cannot "see the marketplace actually work" until it has eliminated the one-sided regulatory handicapping that distorts the marketplace and quells any real competition.

As TDS Telecom (pp. 22-23), USTA (pp. 24-25), and Alltel (pp. 7-8) explain, the Commission should start right now to let each commonly-owned LEC decide whether to remain in the NECA common line pool on the basis of conditions in its own particular study area, to provide LECs the authority to respond competitively to contract prices their competitors offer to the LEC's most lucrative customers, and to authorize zone-based pricing to account for cost differences within a study area. USTA also points out the benefits of adopting optional reform measures. Until the Commission is willing to let the marketplace work, it can only hope to "see" artificial, government-choreographed market operations, not genuine competition, at work.

V. THE COMMISSION SHOULD NOT ADD TO THE RESIDUAL CCL REVENUE REQUIREMENT FOR ROR LECS

Both MCI (pp. 17-18) and JSI (pp. 6-7) arrive, from their opposite viewpoints, at the pragmatic conclusion that the Commission should not switch line side port costs out of the local switching revenue requirement and into the CCL revenue requirement. With caps on the RoR LECs' SLCs and PICCs, the new costs will not be phased into non-usage-based recovery in the

[16] Commentators, such as the Western Alliance (pp. 9-12), explain that §215(f) is not an unjustified obstacle to competition, but rather demonstrates that Congress understood the different economic effects of rural area cream skimming and competition in rural areas.

CCL. Thus, as MCI (p. 17) and USTA (p. 18) both reason, there is no benefit from forcing RoR ILECs to conduct studies to move costs from one usage-based recovery mechanism into another. GCI and AT&T call for applying the same structure to RoR and price cap LECs, but do not explain how the change would advance the proceeding's purpose of mitigating the uneconomic usage-based recovery of costs that do not change with usage. Thus, the record fails to disclose why shifting these additional costs into the CCL would be worth the costs incurred.

Nor should the Commission shift the portion of the TIC that it cannot reassign more specifically to other rate elements into the CCL. As GVNW points out (p. 9), the TIC as a whole is comprised of actual costs, already incurred by ILECs and allocated to the interstate jurisdiction by Parts 36 and 69. GVNW correctly concludes (p. 9) that carriers should be permitted to recover such costs in full. The ceilings on RoR LECs' SLCs and PICCs necessary to meet the 1996 Act's universal service "comparability" requirements will prevent a transfer from traffic sensitive recovery to the common line from eliminating the TIC costs not assigned to other rate elements. As USTA notes (pp. 20-21), RoR LECs are not subject to the annual productivity factor applied to price cap LECs that will be used to retire their TIC charge, so there is little to be gained from shifting the RoR costs rather than simply recovering them via the transport charge that is currently used.

TDS Telecom strongly objects to MCI's claim that the Comptel decision[17] compels the

---

[17] Competitive Telecommunications Association v. FCC, 87 FCC 3rd 522 (D.C. Cir. 1996)

Commission to eliminate the recovery of the TIC unless it can provide for cost based recovery. Southwestern Bell upheld the Commission's actions regarding the TIC in the price caps access reform proceeding. There, the court decided that it was enough for the Commission to reassign the TIC costs where possible, defer open separations issues for joint board consideration and plan a TIC phase out. Here, the different status of RoR costs and regulation prevent the productivity-adjustment phase-out used for price cap LECs. However, universal service concerns are particularly weighty for RoR carriers, and the Commission has undertaken not to slash rural ILECs' revenues while it finishes its universal service implementation proceedings.[18] These reasons are a sufficient explanation for maintaining the current residual TIC recovery arrangements. Thus, the Commission should provide for an appropriate recovery mechanism for these real costs.

GVNW's suggestion (p.10) for a new public policy recovery mechanism charged to all IXCs, based on their presubscribed lines, offers another avenue for recovery worth exploring. Recovery through the federal universal service mechanism would be yet another possibility. What is not lawful is the notion that the court has held that the costs themselves are not legitimate revenue requirements. The Commission should continue to permit recovery of RoR LECs' residual TIC costs in the traffic sensitive charge that now recovers them.

---

[18] See, e.g., n.5, supra.

VI. CONCLUSION

The comments leave no doubt that the Commission cannot responsibly make permanent changes in the RoR LECs' access charge regime in isolation from its consideration of the closely related universal service, separations and other mechanisms. These must, cumulatively, measure up to the Act's universal service, pro-competition and deregulatory commitments. The record demonstrates that the differences between RoR and price cap companies preclude transfer of the price cap LEC access plan to the RoR LECs, since the resulting rate structure would fail the statutory test for rural and urban comparability and compromise the law's nationwide geographic averaging obligations. To allow competition to happen, the Commission should begin now to remove the one-sided regulatory requirements that prevent ILECs from responding to competition. And, if the Commission adopts interim measures it should

(1) cap all RoR residential SLCs at their current levels, without pursuing the impractical and unsound notion of distinguishing primary and non-primary lines;

(2) cap multiline business SLCs at no more than the national average of price cap LECs' SLCs, prohibit IXCs from deaveraging end user pass through charges and rigorously enforce the statutory geographical rate averaging mandate;

(3) cap RoR PICCs at the national average price cap levels;

(4) let RoR LECs continue to recover their residual common line costs through usage-based charges and the legitimate costs in the TIC charge, as at present, but refrain from shifting line side port costs or TIC costs for residual common line collection;

(5) reject IXC demands to reduce rural LECs' interim revenues, contrary to the purpose of the transitional rural universal service plan, by unwarranted tampering with the interstate rate of return, prescription of still "half-baked" FLEC proxy models or mistaken efforts to shift all IXC access costs to local telephone subscribers: and

(6) give careful consideration, in a mandatory universal service joint board, to constructive suggestions such as AT&T's proposal to put nationwide geographic averaging of interexchange charges on a sustainable footing by assigning the excess of RoR LECs' traffic sensitive costs to a separate account in the federal universal service fund.

Respectfully submitted,

TDS TELECOMMUNICATIONS CORPORATION

Margot Smiley Humphrey

By: /s/ Margot Smiley Humphrey
Margot Smiley Humphrey

KOTEEN & NAFTALIN, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 467-5700
margot.humphrey@koteen.com

September 17, 1998

CERTIFICATE OF SERVICE

I, Victoria C. Kim, a secretary in the offices of Koteen & Naftalin, hereby certify that true copies of the foregoing Reply Comments of TDS Telecommunications Corporation, have been served on the parties listed below, via first class mail, postage prepaid on the 17th day of August, 1998.

*Magalie Roman Salas, Esq. (one original,
16 copies, one diskette)
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

*Competitive Pricing Division (2 copies)
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

*Ms. Judy Boley
Federal Communications Commission
1919 M Street, N.W.
Room 234
Washington, D.C. 20554

*International Transcription Service (ITS, Inc.)
1231 20th Street, N.W.,
Washington, D.C. 20036

Mr. Timothy Fain
Office of Management and Budget Desk Officer
10236 NEOB
725 - 17th Street, N.W.,
Washington, D.C. 20503

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello
AT&T Corp.
295 North Maple Avenue
Room 324511
Basking Ridge, NJ 07920

Gene C. Schaerr
James P. Young
AT&T Corp.
1722 Eye Street, N.W.
Washington, D.C. 20006

Donn T. Wonnell
The Independent Telephone &
Telecommunications Alliance (ITTA)
1300 Connecticut Ave., N.W., Suite 600
Washington, D.C. 20036

Carolyn C. Hill
ALLTEL Communications Services Corporation
655 15th Street, N.W., Suite 220
Washington, D.C. 20005

Don Sussman
Alan Buzacott
MCI Telecommunications Corporation
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Michael T. Skrivan
Harris, Skrivan & Associates, LLC
8801 South Yale, Suite 450
Tulsa, OK 74137

The Telephone Association of New England
David Cosson
Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington, D.C. 20037

National Exchange Carrier Association, Inc. (NECA)
Richard A. Askoff
Perry S. Goldschein
100 South Jefferson Road
Whippany, NJ 07981

Kathy L. Shobert
General Communications, Inc. (GCI)
Director, Federal Affairs
901 15th Street, N.W., Suite 900
Washington, D.C. 20005

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
John Hunter
U.S. Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

GVNW Inc./Management
Jeffry H. Smith
8050 S. W. Warm Springs Street, Suite 200
Tualatin, OR 97062

NRTA
Margot Smiley Humphrey
Koteen & Naftalin, LLP
1150 Connecticut Ave., N.W., Suite 1000
Washington, D.C. 20036

NTCA
L. Marie Guillory
2626 Pennsylvania Ave., N.W.
Washington, D.C. 20037

The Western Alliance
Benjamin H. Dickens, Jr.
Gerard J. Duffy
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W., Suite 300
Washington, D.C. 20037

The Minnesota Independent Coalition
Richard J. Johnson
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129

John Staurulakis, Inc.
Bruce Schoonover
6315 Seabrook Road
Seabrook, MD 20706

Fred Williamson & Associates, Inc.
2821 E. 91st Street, Suite 200
Tulsa, OK 74137

Emily C. Hewitt, Esq.
General Services Administration (GSA)
1800 F Street, N.W.,
Room 4002
Washington, D.C. 20405

*denotes hand delivery

Victoria C. Kim

Victoria C. Kim